Supreme Court, U.S.
FILED
MAR 26 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-702

HIRSCH FRIEDMAN,

Petitioner,

vs.

MARY ELLEN HARBOLD,

Respondent.

REPLY BRIEF OF PETITIONER HIRSCH FRIEDMAN

SPENCER J. KRUPP, Attorney
3179 Maple Drive, N.E.
Atlanta, Georgia 30305
Attorney for Petitioner

INDEX

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT AND CITATION OF AUTHORITIES 2

(A) JUDGE WILLIAM T. DEAN LACKS STANDING TO ARGUE BEFORE THIS HONORABLE COURT 2, 3, 4

(B) JUDGE DEAN'S ATTEMPT TO APPEAL HIS OWN DECISION IS PRIMA FACIE PROOF OF HIS PERSONAL INVOLVEMENT IN THE INSTANT CASE 4

(C) PETITIONER IS ENTITLED TO A NEUTRAL JUDGE REGARDLESS OF WHETHER THE JUDGE WAS PERSONALLY EMBROILED WITH THE PETITIONER 4,5

(D) PETITIONER WAS UNAWFULLY HELD TO A HIGHER DEGREE OF CULPABILITY THAN ANY OTHER WITNESS UNDER THE SAME OR SIMILAR CIRCUMSTANCES 5,6

(E) PETITIONER'S CONDUCT POSED NO CLEAR AND PRESENT DANGER TO THE ORDERLY ADMINISTRATION OF JUSTICE 6

III. CONCLUSION 7

CERTIFICATE OF SERVICE 8

TABLE OF CITATIONS

	Page
Baker v. Carr, 369 U.S. 186 (1962)	3, 4
Doremus v. Board of Education, 342 U.S. 429 (1952)	2
Flast v. Cohen, 392 U.S. 83 (1968)	3, 4
Griswold v. Connecticut, 381 U.S. 479 (1963)	3
Massachusetts v. Mellon, 262 U.S. 447 (1923)	2
Mayberry v. Pennsylvania, 400 U.S. 455 (1971)	4
McGowan v. Maryland, 366 U.S. 420 (1961)	3
NAACP v. Alabama, 357 U.S. 449 (1958)	3
Townsend v. State, 54 Ga. App. 627, 188 S.E. 560 (1936)	5
Wood v. Georgia, 370 U.S. 375 (1962)	6

CONSTITUTIONAL PROVISIONS

United States Constitution:	
Article III	2
Fourteenth Amendment	6

RULES OF SUPREME COURT

Rule 42	1, 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-702

HIRSCH FRIEDMAN,

Petitioner,

vs.

MARY ELLEN HARBOLD,

Respondent.

REPLY BRIEF OF PETITIONER HIRSCH FRIEDMAN

I

INTRODUCTION

The responsive brief forwarded by Judge Dean should not be considered by this honorable court as he is neither a party nor otherwise a respondent in this case and of consequence, he lacks the requisite standing to voice any arguments without consent of both parties or this court's express permission. Rule 42, Supreme Court Rules.

Secondly, assuming Judge Dean to be properly before this court, his arguments are not only in error and un-

supported by both the facts and the law but moreover, they admit Judge Dean's apparent interest or personal stake in the outcome of this case so as to buttress petitioner's view that such a personal stake required a different judge to hear the contempt citation. Petitioner herein shall address these issues and demonstrate Judge Dean's position to be unacceptable and unpersuasive.

II

ARGUMENT AND CITATION OF AUTHORITIES

(A) JUDGE WILLIAM T. DEAN LACKS STANDING TO ARGUE BEFORE THIS HONORABLE COURT.

Petitioner is somewhat perplexed as to how Judge Dean can argue in opposition to petitioner where, for all practical purposes, he is appealing his own decision. The judge was not a party to the original lawsuit and only became involved as the trial judge by happenstance pursuant to the assigning of the case to him under local court rules. No permission by both parties herein was sought or obtained and no Order from this court has permitted amicus curiae status. Rule 42, Supreme Court Rules. Oddly enough, the judge nonetheless maintains he has no personal stake in the outcome.

The requirements of legal standing as a condition precedent to arguing before this court is a well settled principle of law. The doctrine can be generally described as concerning *who* may assert certain contentions in a court of law. The standing issue has deep roots in American jurisprudence, having as its genesis the numerous and complex issues involving the language in Article III of the United States Constitution as first applied to taxpayer lawsuits, *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *Doremus v. Board of Education*, 342 U.S. 429

(1952); *Baker v. Carr*, 369 U.S. 186 (1962); *Flast v. Cohen*, 392 U.S. 83 (1968), and by later decisions to other areas of law. See: *NAACP v. Alabama*, 357 U.S. 449 (1958); *McGowan v. Maryland*, 366 U.S. 420 (1961); *Griswold v. Connecticut*, 381 U.S. 479 (1963).

In *Baker v. Carr* and *Flast v. Cohen*, both *supra*, one can readily discern the illogic in Judge Dean's position wherein he implies on the one hand he has standing, while on the other hand stating he has no personal involvement in the instant case:

> ". . . The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The "gist of the question of standing" is whether the party seeking relief has "alleged such *personal stake in the outcome of the controversy* as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justifiable." 392 U.S. at 99, 100 (Emphasis supplied).

Fundamentally, to allow Judge Dean to appeal *his own decision* would open a pandora's box of appellate problems. It would, without question, allow every judge to assume an adversary role. Sanctioning this course of conduct is manifestly unfair and inequitable and will ultimately place an insurmountable burden upon the State to

respond and will furthermore usurp well settled principles of law which confine argumentation to *parties*. Clearly, Judge Dean cannot be permitted to transgress his position of neutrality in his quest to become an adversary in this case; it will present conflicts of interest of staggering proportions.

Petitioner respectfully submits Judge Dean has no authority to be before this court in an attempt to appeal his own decision. He has not requested amicus curiae status and absent consent or special permission from this court, he cannot turn from judge to adversary.

(B) JUDGE DEAN'S ATTEMPT TO APPEAL HIS OWN DECISION IS PRIMA FACIE PROOF OF HIS PERSONAL INVOLVEMENT IN THE INSTANT CASE.

Contrary to the judge's assertions, *Baker v. Carr*, and *Flast v. Cohen*, both *supra*, show the concept of standing includes *by definition* personal involvement in the case. Even Judge Dean agrees that such personal involvement requires a different judge to hear the merits of the contempt citation (Response of the Honorable William T. Dean to Petitioner's Writ of Certiorari; pps. 2-4).

(C) PETITIONER IS ENTITLED TO A NEUTRAL JUDGE REGARDLESS OF WHETHER THE JUDGE WAS PERSONALLY EMBROILED WITH THE PETITIONER.

Petitioner's position is not so bold as Judge Dean would have this court believe. The ruling sought in this case goes only one logical step further than *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971), where, as here, the purported contemptuous language was addressed not to the judge, but nonetheless occurs in the courtroom and

especially where it is the judge himself who has issued the contempt citation as being personally offensive to him.

The non-summary hearing held in this case was merely form without substance where the issuance of the citation itself manifested the judge's predisposition to rule on the contempt adversely to petitioner. Judge Dean would have this court believe the reasons prompting his issuance of a citation are placed aside and that he could nonetheless remain neutral when it was that very judge who felt strongly enough to issue the citation in the first instance.

Once a judge issues a citation, there should be nothing more for that judge to decide. As far as the issuing judge is concerned, he has already expressed how he feels. By holding a hearing, he only gets a chance to formally re-affirm his first ruling. That is precisely why it is so crucial to have another judge rule on the contempt action. Due process demands neutrality and impartiality and the safeguards so carefully erected to insure same are vitiated when one judge acts as both accuser and trier of fact at a non-summary hearing.

(D) PETITIONER WAS UNLAWFULLY HELD TO A HIGHER DEGREE OF CULPABILITY THAN ANY OTHER WITNESS UNDER THE SAME OR SIMILAR CIRCUMSTANCES.

As *Townsend v. State*, 54 Ga. App. 627, 188 S.E. 560 (1936) makes clear, attorneys should not be judged by different standards when alleged contemptuous conduct is in issue. However, Judge Dean did, in fact, make petitioner's status an important fact, finding the situation "much more grave" because petitioner was an

attorney. This is constitutionally impermissible as a denial of equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

(E) PETITIONER'S CONDUCT POSED NO CLEAR AND PRESENT DANGER TO THE ORDERLY ADMINISTRATION OF JUSTICE.

Regardless of whether the alleged contemptuous statements were uttered in or out of court, the fact remains that to be actionable, same must interfere with the orderly administration of justice. *Wood v. Georgia*, 370 U.S. 375 (1962). The record in this case evidences no such disruptive conduct and as such, no clear and present danger was experienced at trial. Absent a showing of interference, there was truly no contempt of court.

III
CONCLUSION

For the reasons forwarded herein, petitioner prays for a reversal of the trial court's ruling finding him in contempt of court.

Respectfully submitted,

FRIEDMAN & KRUPP, P.C.
Attorneys for Petitioner

By:_____
SPENCER J. KRUPP

3179 Maple Drive, N.E.
Atlanta, Georgia 30305
Phone: (404) 231-2025

CERTIFICATE OF SERVICE

I, Spencer J. Krupp, hereby certify that I have served a copy of the foregoing Reply Brief on LAWRENCE S. BURNAT, at 127 Peachtree Street, N.E., Atlanta, Georgia 30303 and JAMES H. WEEKS, Assistant County Attorney, Suite 453 One West Court Square, Decatur, Georgia 30030.

This 25th day of March, 1980.

By:_____

SPENCER J. KRUPP
Attorney for Petitioner